

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor: Klaus Abraham-Fuchs et al.
Application No.: 09/742,268
Filed: December 20, 2000
Title: Method and System for Allowing a Neurologically Diseased
Patient to Self-Monitor the Patient's Actual State
Examiner: Vanel Frenel
Art Unit: 3626

Pre-Appeal Brief Review Request

Mail Stop AF
Commissioners for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This amendment is being filed in response to the Office Action dated June 9, 2006 for which a shortened statutory period of three months ending September 9, 2006 was set in which to respond, the attached Notice of Appeal and Pre-Appeal Brief Review Request is submitted and reconsideration of the rejections is respectfully requested. Applicants submit that this response is timely.

Applicant respectfully submits that no amendments are being filed with this Request. This Request is being filed concurrently with a Notice of Appeal. The Review is requested for the following reasons set forth below.

Rejection of Claims 1-28 under 35 USC § 103(a)

Claims 1-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gross et al. (U.S. Patent No. 5,147,205) in view of Nadel (U.S. Patent No. 5,788,648).

The present claimed invention as claimed in claims 1 and 17 describes a method and system for allowing a patient, suffering from a neurological disease and receiving

medicine for that disease, to self monitor his actual state. A computer is provided at a location readily accessible to a patient substantially on a daily basis for acquiring information from a patient, via an interactive procedure. The acquired information is selected from a group consisting of information characterizing a motor function of the patient, information characterizing a verbal communication ability of the patient, and information characterizing cognitive abilities of the patient. An expert system is accessible by the computer and the acquired patient information is provided to the expert system for processing thereby. At least one quantified indicator describing the state of the patient suffering from a neurological disease which is treated with medication is determined from the acquired information. The computer is provided with an output device, and the quantified indicator is made available to the patient via the output device. A full listing of the claims as they currently stand can be found in the Appeal Brief filed on January 3, 2006. The arguments presented below are applicable to claims 1 and 17. Applicant respectfully submits that Gross and Nadel, alone or in combination, neither disclose nor suggest the present claimed invention.

Gross (with Nadel) neither discloses nor suggests “a method for allowing a patient, suffering from a neurological disease and receiving medication for said disease, to self-monitor the patient’s actual state” as recited in the present claimed invention. Rather, Gross (with Nadel) describes a system wherein a computerized tachistoscope presents information in a transitory, flashed, manner in order to mandate student-attentiveness, retention, and learning, particularly in teaching reading. This is wholly unlike and unrelated to the present claimed system. Contrary to the assertions in the Rejection, Column 10, lines 30-62 of Gross merely describe a “flashed presentation of information for **teaching**, particularly for **teaching reading and spelling**.” The Gross system teaches reading and spelling by forcing “the student-user to mentally acquire, and to at least momentarily retain, transitorily presented information so that the student-user may, subsequently to the momentary presentation of the information, correctly answer questions posited concerning such information” (Column 10, lines 42-48). This is wholly unlike the present claimed invention and provides no common problem recognition with the problem addressed by the present claimed invention, namely, “allowing a patient, suffering from a **neurological disease** and receiving medication for said disease, to **self-monitor**” his own “actual state,” as recited in the present claimed

invention. Learning to read and spell has nothing to do with a system allowing a patient to “self-monitor” his/her “actual” **medical** “state”.

Applicant further respectfully submits Gross (with Nadel) neither discloses nor suggests “providing a computer at a location readily accessible to a patient substantially on a daily basis for acquiring information from a patient,” as recited in the present claimed invention. The “information” acquired “from a patient,” in the present claimed invention regards “the motor functions, verbal and/or cognitive abilities of the patient” (Specification page 3, lines 8-9). Rather, column 12, line 49 to column 13, line 28 of Gross merely describes displaying the user’s name to make the system more “familiar and friendly,” and allows the student-user to select the speed at which information is presented. Thus, the Gross system is concerned with teaching reading and spelling to student-users and NOT to self-monitoring a neurological patient’s actual state. Applicant respectfully submits that these cited sections provide no 35 USC 112 enabling disclosure of the claimed method.

Contrary to the assertions in the Rejection, Gross neither discloses nor suggests “acquiring information, via an interactive procedure, from a patient wherein the acquired information is selected from a group consisting of information characterizing a motor function of the patient, information characterizing a verbal communication ability of the patient, and information characterizing cognitive abilities of the patient,” as recited in the present claimed invention. Column 5, lines 30-40 of Gross merely describe that the system “shows good reading and spelling skills in order to inculcate their development” in student-users. Column 11, lines 16-29 of Gross recites “during the teaching of spelling...motor skills...[are] fully developed.” These skills are developed by the student-user having to correctly spell the words flashed on the screen. This is entirely unlike the present claimed invention where, because neurological diseases are treated with medications that negatively influence neurological abilities such as motor function, verbal communication ability and cognitive abilities of the patient, the patient needs to be able to continually self-monitor and balance the desired effect and side effects of the medication (Specification page 1, lines 7-16). Developing a student-user’s motor skills, as in Gross, is entirely unrelated to self-monitoring the motor function of a patient suffering from a neurological disease to monitor the negative influence of the medication for the disease. Thus, Gross neither discloses nor

suggests “acquiring information, via an interactive procedure, from a patient wherein the acquired information is selected from a group consisting of information characterizing a motor function of the patient, information characterizing a verbal communication ability of the patient, and information characterizing cognitive abilities of the patient,” as recited in the present claimed invention.

Furthermore, the system of Gross neither discloses nor suggests “providing an expert system accessible by the computer,” as recited in the present claimed invention. The system described in column 7, lines 52-68 of Gross describes the visual stimuli being implemented by a computer. The user interacts with the system to control the sequence and extent of staged presentations. Gross provides no means for evaluating the state of the user. The expert system of the present invention, on the other hand, quantifies the state of the patient concerning his motor/verbal/cognitive abilities.

Applicant further respectfully submits that Nadel, similarly to Gross, as admitted on page 3 of the Rejection, neither discloses nor suggests “providing said acquired patient information to said expert system for processing thereby, and determining, from the acquired information, at least one quantified indicator describing the state of the patient suffering from a neurological disease which is treated with medication,” as recited in the present claimed invention. Rather, column 1, lines 50-65, column 2, lines 64 to column 3, line 32 of Nadel describes a system including an electroencephalograph that merely computes “a correlation quotient of the brainwave signals and the stimuli,” to determine if there is a mutual relationship between the brainwave signals and the stimuli. Nowhere in Nadel is there any evaluation of the state of the user. The Nadel system provide no common problem recognition with the present claimed invention, namely “describing the state of the patient suffering from a neurological disease which is treated with medication.”

It is also respectfully submitted that there is no reason or motivation to combine these two references as Gross is directed towards teaching student-users how to read and spell, while Nadel is concerned with “correlating quantitatively any connection between external stimuli and the brainwave responses of a human brain” (Nadel column 1, lines 36-38). These inventions are concerned with entirely different and unrelated technical fields. Thus one would not seek to modify the method of teaching

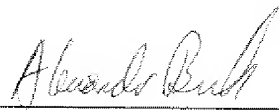
reading of Gross by adding an electroencephalograph to measure correlation of external stimuli with brain wave activity and spelling. There is no enabling disclosure in Gross of including an advanced monitoring device such as electroencephalograph which provides no obvious enhancement to the educational system disclosed therein. Additionally, even if there is some motivation to combine these two references, such a combination would produce a system that uses a correlation quotient of brainwave signals and stimuli to teach student-users to read and spell words. Neither Gross alone or in combination with Nadel provide any disclosure as to how a system such as this would operate to accomplish their intended objectives. Applicant respectfully submits that the system combining the teaching of Gross with Nadel would be inoperable.

In view of the above remarks, it is respectfully submitted that Gross and Nadel when taken alone or in combination provide no 35 USC 112 compliant enabling disclosure showing the features claimed in claim 1 and 17. As claims 2-16 are dependent on claim 1 and claims 18-28 are dependent on claim 17, it is respectfully submitted that claims 2-16 and 18-28 are patentable for the same reasons as claim 1 and 17 discussed above. It is thus further respectfully submitted that this rejection is satisfied and should be withdrawn.

Having fully addressed the Examiner's rejections, it is believed that, in view of the preceding amendments and remarks, this application stands in condition for allowance. Accordingly then, reconsideration and allowance are respectfully solicited. If, however, the Examiner is of the opinion that such action cannot be taken, the Examiner is invited to contact the applicant's attorney at the phone number below, so that a mutually convenient date and time for a telephonic interview may be scheduled.

Respectfully submitted,
Klaus Abraham-Fuchs et al.

Date: September 8, 2006

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